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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

CHARLES STEVENSON,

Defendant and Appellant.

A155139

(San Francisco County
Super. Ct. No. SCN223620)

Defendant Charles Stevenson appeals from his resentencing after this court affirmed, but remanded for resentencing, his conviction for burglary and receiving stolen property. The sole request in the appeal is a remand so that the sentencing court may consider whether to exercise its discretion to strike defendant's prior serious felony enhancements pursuant to recently enacted Senate Bill No. 1393. (2017-2018 Reg. Sess.) Defendant and the People concur that the case should be remanded for this purpose. We agree.

BACKGROUND

Defendant was convicted of first degree burglary (Pen. Code, § 459)¹ and receiving stolen property (§ 496, subd. (a)) in August 2015. He was sentenced to a total term of 16 years and eight months in state prison, consisting of the upper term of six years for burglary, eight months for receiving stolen property, and two five-year serious

¹ All further statutory references are to the Penal Code unless otherwise indicated.

felony enhancements pursuant to section 667, subdivision (a)(1). On appeal, this court affirmed the judgment, but reduced defendant's conviction for receiving stolen property to a misdemeanor and remanded for resentencing. (*People v. Stevenson* (Dec. 21, 2017, A149253) [nonpub.opn.].)²

At the resentencing hearing in August 2018, the court sentenced defendant to the upper term of six years for burglary plus the two five-year sentence enhancements pursuant to section 667, subdivision (a)(1), for a total term of 16 years. The sentencing court also awarded defendant 1,534 days of combined custody and conduct credit.

Defendant filed a timely appeal from the resentencing.

DISCUSSION

Defendant and the People agree that we should remand this case for resentencing to allow the sentencing court to decide whether to exercise its discretion to strike defendant's prior serious felony enhancements pursuant to recently enacted Senate Bill No. 1393. (2017-2018 Reg. Sess.) (hereafter S.B. 1393). We agree.

S.B. 1393, which went into effect on January 1, 2019, amended former sections 667, subdivision (a), and 1385, subdivision (b). (*People v. Garcia* (2018) 28 Cal.App.5th 961, 971 (*Garcia*).) Under the prior versions of sections 667 and 1385, "the court [was] required to impose a five-year consecutive term for 'any person convicted of a serious felony who previously has been convicted of a serious felony' [citation], and the court ha[d] no discretion 'to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under [s]ection 667.'" (*Ibid.*) S.B. 1393 amended sections 667, subdivision (a), and 1385, subdivision (b), to allow a trial court to exercise its discretion to strike a prior serious felony conviction for sentencing purposes. (Stats. 2018, ch. 1013, §§ 1–2; *Garcia, supra*, 28 Cal.App.5th at p. 971.)

"[S.B.] 1393 applies retroactively to all cases or judgments of conviction in which a five-year term was imposed at sentencing, based on a prior serious felony conviction,

² We find that the underlying facts of defendant's convictions are not relevant to this appeal.

provided the judgment of conviction is not final when [S.B.] 1393 [became] effective on January 1, 2019.” (*Garcia, supra*, 28 Cal.App.5th at pp. 971–972.) Although the Legislature did not expressly declare that S.B. 1393, or the amendments it made to sections 667, subdivision (a) and 1385, subdivision (b), apply retroactively, “it is appropriate to infer, as a matter of statutory construction, that the Legislature intended [S.B.] 1393 to apply to all cases to which it could constitutionally be applied, that is, to all cases not yet final when [S.B. 1393] be[came] effective on January 1, 2019. [Citations.]” (*Id.* at p. 973; citing *In re Estrada* (1965) 63 Cal.2d 740.)

As defendant’s judgment is not yet final, S.B. 1393 and the amendments it made to sections 667 and 1385 apply retroactively to defendant’s sentence. Remand is required as nothing in the record demonstrates that the sentencing court would not have stricken the two five-year prior serious felony enhancements if it had the discretion to do so. (See *People v. Almanza* (2018) 24 Cal.App.5th 1104, 1110 [“[r]emand is required unless the record reveals a clear indication that the trial court would not have reduced the sentence even if at the time of sentencing it had the discretion to do so”].)

DISPOSITION

The sentence imposed on the prior serious felony enhancements under section 667, subdivision (a)(1) is vacated. The matter is remanded to the trial court for resentencing limited to determining whether one or both of the prior serious felony enhancements should be stricken or dismissed under section 667, subdivision (a) and section 1385, subdivision (b), as amended by Senate Bill No. 1393 (Stats. 2018, ch. 1013 §§ 1-2, eff. Jan. 1, 2019). If the trial court does not strike or dismiss the serious felony enhancements, then the sentence on those enhancements shall be reinstated as originally imposed. The trial court is directed to issue a new minute order and an amended abstract of judgment after such resentencing to reflect whether it strikes or dismisses, or reinstates the sentence on the prior serious felony enhancements. The trial court shall forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed

Petrou, J.

WE CONCUR:

Siggins, P.J.

Fujisaki, J.

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